

Application No.: 10/565,383
Amendment dated December 22, 2008
Reply to Office Action of September 22, 2008

Docket No.: 1422-0707PUS1

REMARKS

Claims 1-12 are pending. No new matter has been added by way of the present submission. For instance, the claims have been amended to reference a "composition" as well as to clarify the nature of the present invention. Further, claim 1 has been amended to specifically define the polysaccharide as supported by the present specification at page 4, line 22 to page 5, line 9. Lastly, new claims 7-10 are supported by the present specification at page 8, lines 15-22 and new claim 11 and 12 are supported by the present specification at page 4, line 22 to page 5, line 9. Thus, no new matter has been added.

In view of the following remarks, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.

Objection to the Claims

The Examiner has objected to the claims for the recitation of "characterized in that" in line 1 of claim 1. The Examiner suggests modifying this language to recite "wherein" as a possible term. Applicants traverse and submit that the claims have been amended to remove this issue. Thus, this objection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Issues under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 1-6 under 35 U.S.C. § 112, second paragraph for the reasons recited at 2-3 of the outstanding Office Action. Applicants traverse this rejection and submit that the claims have been amended to remove these issues. Reconsideration and withdrawal thereof are thus, respectfully requested.

Issue under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-6 under 35 U.S.C. § 102(b) as being anticipated by Takahashi et al., U.S. Publication No. 2002/0001659 (hereinafter referred to as Takahashi '659). Applicants respectfully traverse.

Independent claim 1 relates to a composition for improving the quality of a deep-fried food compared to the quality of the same deep-fried food prepared without said composition, comprising a polysaccharide powder having an average particle size of 20 μm or less, wherein the polysaccharide is selected from the group consisting of guar gum, pectin, xanthane gum, alginic acid and carboxymethyl cellulose. It is now evident that the polysaccharide of the present invention does not include alginic ester.

In contrast, Takahashi '659 discloses the use of alginic ester in order to retard oil absorption during frying. According to paragraph [0023] of Takahashi '659, the particle size is 125 μm or less, preferably 100 μm or less. In the Examples of Takahashi '659 data at 250-20 μm is disclosed (See Tables 5 and 6), however, there is no data provided for particle sizes of less than 20 μm .

It is therefore evident that the disclosure of Takahashi '659 is distinct from the presently claimed subject matter. For instance, the present invention uses a specific polysaccharide powder having an average particle size of 20 μm or less. Moreover, the alginic ester of Takahashi '659 is not claimed in the present invention. Therefore, for these reasons alone, there exists no anticipation based upon the disclosure of Takahashi '659.

Moreover, even if the Examiner believes that a case of obviousness exists, Applicants

submit that this is incorrect. For instance, even though the “alginic acid” claimed in the present invention is arguably similar to the “alginic ester” of Takahashi ‘659, there exists no motivation to substitute one for the other. Thus, there can exist no *prima facie* case of obviousness. Regardless, the presently claimed subject matter achieves unexpectedly superior results.

For instance, superior and unexpected effects are achieved by using particles of which the average particle diameter is that of the present invention (20 μm or less). This is evident once the results of the present specification are reviewed. In this regard, the Examiner’s attention is directed to the present Examples starting at page 17 of the present specification. These results are summarized hereinbelow:

Guar Gum:

Inventive Examples 1, 4 and 9: 18.79 μm

Comparative Examples 1, 5 and 11: 51.35 μm

A review of the results of these tests (see Tables 1, 2 and 4) reveals that the guar gum having the presently claimed average particle size (20 μm or less) has a lower oil content in the batter (or dough), superior mouthfeel and superior taste.

Pectin:

Inventive Examples 2, 5 and 10: 3.33 μm

Comparative Examples 2, 6 and 12: 37.20 μm

Again, a review of the test results reveals that the pectin of the present invention achieves a lower oil content in the batter (or dough), superior mouthfeel and superior taste.

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Alginic Acid:

Inventive Examples 3, 6 and 11: 18.96 μm

Comparative Examples 3 and 13: 36.33 μm

Reviewing the test data, it is clear that the alginic acid of the present invention achieves a lower oil content in the batter (or dough), superior mouthfeel and superior taste.

It is thus evident that polysaccharide powders of the present invention having an average particle size of 20 μm or less achieve unexpectedly superior results as compared to polysaccharide powders having particle sizes above this claimed range. Therefore, any hypothetical *prima facie* case of obviousness is moot.

In view of the above, Applicants submit that the present claims define patentable subject matter. The Examiner is therefore respectfully requested to withdraw all rejections and allow the currently pending claims.

If the Examiner has any questions or comments, please contact Craig A. McRobbie, Reg. No. 42,874, at the offices of Birch, Stewart, Kolasch & Birch, LLP, at the number provided below.


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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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